

THANG DUNG HUYNH,) No. C 05-3823 MMC (PR)
)
 Petitioner,) **ORDER OF DISMISSAL**
)
 v.)
)
 PEOPLE OF THE STATE OF) (Docket No. 2)
 CALIFORNIA,)
)
 Respondent.)

BACKGROUND

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);
3 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
4 order directing the respondent to show cause why the writ should not be granted, unless it
5 appears from the application that the applicant or person detained is not entitled thereto." 28
6 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are
7 vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v.
8 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-
9 76 (1977)).

10 B. Legal Claims

11 Petitioner claims (1) that the trial court incorrectly imposed a one-year term under
12 California Penal Code § 667.5(b) based on petitioner's prior commitment to the California
13 Youth Authority; and (2) that under state law, his prior robbery conviction should have been
14 stricken in the interests of justice. These claims are not cognizable in federal district court
15 because petitioner does not allege the violation of any federal law, as is required for federal
16 habeas relief. Rose v. Hodges, 423 U.S. 19, 21 (1975). A federal court may vacate a state
17 sentencing decision only on the basis of some transgression of federal law, not state law. See
18 Walker v. Endell, 850 F.2d 470, 476 (9th Cir. 1987). Accordingly, petitioner has not stated a
19 cognizable claim for federal habeas relief.

20 **CONCLUSION**

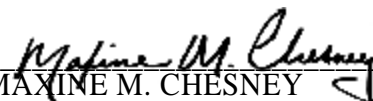
21 In light of the foregoing, the petition for a writ of habeas corpus is DISMISSED for
22 failure to state a cognizable claim for relief. The application to proceed in forma pauperis is
23 GRANTED.

24 This order terminates Docket No. 2.

25 The Clerk shall close the file and terminate any pending motions.

26 IT IS SO ORDERED.

27 DATED: October 28, 2005

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MAXINE M. CHESNEY

United States District Court
For the Northern District of California

United States District Judge

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